

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BERLIN
INFO AMEMBASSY BONN

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STADIS/////////////////////////////////
BERLIN FOR SURENA; BONN FOR PFUND

E.O. 11652: N/A

TAGS: OGE, AINF

SUBJECT: IRS INQUIRY: PRIVACY ACT

REF: 1) BERLIN 1653; 2) SPENCER-SURENA LETTER OF JUNE 22

1. WITHOUT MAKING A DETERMINATION AS TO WHETHER OR NOT USG IS THE "EMPLOYER" OF D-MARK PERSONNEL, DEPARTMENT BELIEVES THAT PRIVACY ACT RESTRICTS THE KIND OF INFORMATION MISSION CAN MAKE AVAILABLE TO IRS ATTACHE IN ABSENCE OF A WRITTEN REQUEST IN ACCORDANCE WITH SECTION (B)(7) OF PRIVACY ACT.

2. THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS REPORT ON THE PRIVACY ACT, REPORT NO. 93-1416, STATES, P. 13, "THE COMMITTEE . . . BELIEVES THAT THE PUBLIC INTEREST REQUIRES THE DISCLOSURE OF SOME PERSONAL INFORMATION. EXAMPLES OF LIMITED OFFICIAL USE

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PAGE 02 STATE 153955

SUCH INFORMATION ARE . . . THE NAMES, TITLES, SALARIES, AND DUTY STATIONS OF MOST FEDERAL EMPLOYEES."

3. BY ANALOGY, WE ASSUME THAT IF NAMES AND SALARIES OF MOST FEDERAL EMPLOYEES ARE NOT PROTECTABLE INFORMATION UNDER PRIVACY ACT, SIMILAR INFORMATION ON OTHER INDIVIDUALS IF FOUND IN GOVERNMENT RECORDS, IS NOT PROTECTABLE INFOR-

MATION EITHER IN ABSENCE OF SOME COMPELLING REASON WHY IT SHOULD BE SO.

4. HOWEVER, OMB GUIDANCE ON ACT INDICATES THAT INFORMATION OTHER THAN SALARY RATE, INCLUDING TAX DEDUCTIONS, BOND DEDUCTIONS, RETIREMENT DEDUCTIONS, AND ALLOTMENTS, IS PRIVILEGED INFORMATION WHICH MAY NOT BE RELEASED WITHOUT CONSENT OF INDIVIDUAL UNLESS RELEASE WOULD FALL UNDER ONE OF THE OTHER CONDITIONS OF DISCLOSURE, SUCH AS WRITTEN REQUEST FROM ANOTHER AGENCY UNDER SECTION (B)(7) OF PRIVACY ACT. THUS, TO THE EXTENT THAT "PAYROLL RECORDS" REQUESTED BY IRS WOULD INCLUDE MORE THAN THE SALARY OF THE INDIVIDUALS, DEPARTMENT BELIEVES IRS MAY BE FURNISHED THE OTHER INFORMATION IN THE "PAYROLL RECORDS" ONLY WHEN SECTION (B)(7) OF PRIVACY ACT HAS BEEN COMPLIED WITH.

5. IT IS DEPARTMENT'S OPINION THAT MISSION CAN ALSO FURNISH SOCIAL SECURITY NUMBERS, IF KNOWN, SINCE SECTION 7 OF PRIVACY ACT PLACES RESTRICTIONS ONLY ON THE GOVERNMENT'S ABILITY TO REQUEST SOCIAL SECURITY NUMBER DIRECTLY FROM THE INDIVIDUAL.

6. THERE IS ONE OTHER FACET OF THIS PROBLEM. SECTION (E) OF PRIVACY ACT REQUIRES AGENCIES TO "COLLECT INFORMATION TO THE GREATEST EXTENT PRACTICABLE DIRECTLY FROM THE INDIVIDUAL WHEN THE INFORMATION MAY RESULT IN LIMITED OFFICIAL USE

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PAGE 03 STATE 153955

ADVERSE DETERMINATIONS ABOUT AN INDIVIDUAL'S RIGHTS, BENEFITS, AND PRIVILEGES UNDER FEDERAL PROGRAMS." IN A PRIOR IRS REQUEST TO ANOTHER EMBASSY FOR REPRESENTATION EXPENSE RECORDS OF EMPLOYEES DEPARTMENT INSTRUCTED EMBASSY TO TELL IRS THAT THEY SHOULD ATTEMPT TO FIRST SEEK THE INFORMATION DIRECTLY FROM OUR EMPLOYEES. IT WOULD APPEAR THAT MISSION COULD FURNISH NAMES AND BASIC SALARY OF INDIVIDUALS TO IRS, WITH REQUEST THAT IRS FIRST ATTEMPT TO COLLECT OTHER DATA DIRECTLY FROM THE AFFECTED INDIVIDUALS BEFORE APPROACHING MISSION FOR MORE INFORMATION. CHRISTOPHER

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